

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

1037276,014 03/25/99 SILE

A SPI011 (42891)

WILLIAM E. MC SHANE
CONNOLLY AND HUTZ
1210 MARKET STREET
P O BOX 2207
WILMINGTON DE 19899

HM12/0807

EXAMINER

OWENS JR, H

ART UNIT

PAPER NUMBER

1623

DATE MAILED:

08/07/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No. 09/276,014	Applicant(s) Le
Examiner Howard Owens	Group Art Unit 1623

Responsive to communication(s) filed on Apr 17, 2000

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 1-23 is/are pending in the application.

Of the above, claim(s) 15-23 is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-14 is/are rejected.

Claim(s) _____ is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

-- SEE OFFICE ACTION ON THE FOLLOWING PAGES --

Art Unit 1623

DETAILED ACTION5 **Restriction Requirement**

Applicant's election with traverse of claims 1-13 in Paper No. 5 is acknowledged. The traversal is on the ground(s) that "the search would have to include the art relating to all uses of these encapsulated particles". This is not found persuasive because the scope of the instant compositions of Group I and Group II with respect to the components and the classification thereof are divergent and warrant the maintenance of the restriction (as cited in the restriction requirement, Group II is classified in class 264, subclass 4 and Group III is classified in class 426, subclass 650).

The requirement is still deemed proper and is therefore made FINAL.

20 **Objection to claims**

For clarity, use of the abbreviation "DP" claims 1-7 and 12 while accepted art abbreviations should be set forth initially as the full written terms (said abbreviations are intended to represent). Moreover, the parentheses present within these claims should be removed.

25

Claim Rejections - 35 U.S.C. § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

30 A person shall be entitled to a patent unless --

Art Unit 1623

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5

Claims 1-14 are rejected under 35 U.S.C. § 102(b) as being anticipated by Caboche, U.S. Patent No. 5,436,329 and by Mentink et al., U.S. Patent No. 5,314,701.

10 Claims 1-14 are drawn to a composition comprising hydrogenated saccharides (hydrogenated monosaccharides, hydrogenated disaccharides, hydrogenated trisaccharides, hydrogenated oligosaccharides and hydrogenated polysaccharides) of varying composition.

15 Applicant's inclusion of an acidulant in claim 13 is not seen to be novel over the prior art as the use of acidulants such as malic acid, citric acid or tartaric acid in this food art is common practice.

20 Caboche teach a composition containing hydrogenated saccharides wherein the DP values overlap or anticipate those of the claimed invention (see column 2, lines 61 - column 3, line 30). Caboche also teach the inclusion of a crystallisable polyol such as ISOMALT (see table 1) in the composition and the use of this composition in confectionary products (see example 6 and columns 1-2).

25 Mentink et al. teach a sugar free hard candy containing hydrogenated saccharides wherein the DP values and proportions of the saccharides are analogous to those set forth in the instant invention (see column 6, line 29 - column 7, line 68) also containing a crystallisable polyol such as isomalt (see example 1) wherein the transition glass temperature (tgc) is between 60° and 90° C (col. 6, line 66) analogous to the tgc set forth in the instant claims.

Art Unit 1623

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Howard Owens whose telephone number is (703) 306-4538 . The examiner can normally be reached on Mon.-Fri. from 8:30 a.m. to 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the Primary Examiner signing this action, Gary Geist who can be reached on (703) 305-1701 . The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

15

Howard Owens
Group 1623



GARY GEIST
SUPERVISORY PATENT EXAMINER
TECH CENTER 1600